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Written submission by the Commission on Human Rights of the Philippines*

Note by the Secretariat

The Secretariat of the Human Rights Council hereby transmits the communication submitted by the Commission on Human Rights of the Philippines**, reproduced below in accordance with rule 7(b) of the rules of procedures described in the annex to Council resolution 5/1, according to which participation of national human rights institutions is to be based on arrangements and practices agreed upon by the Commission on Human Rights, including resolution 2005/74 of 20 April 2005.

* National human rights institution with A status accreditation from the Global Alliance of National Institutions for the Promotion and Protection of Human Rights.

** Reproduced in the annex as received, in the language of submission only.

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Annex

Inputs of the Commission on Human Rights of the Philippines for the Annual interactive debate on the rights of persons with disabilities, with a focus on Article 13 of the Convention on the Rights of Persons with Disabilities regarding access to justice

1. The following inputs from the Commission on Human Rights of the Philippines (hereinafter the "Commission")[1] took into consideration local and international reports from government, civil society, the media, and international non-government organizations. This submission also utilized the Commission's own documentation of independent monitoring activities and statements all of which were subjected to the internal deliberations of the Commission En Banc.

National policies on access to justice of persons with disabilities[2]

2. The Philippine judicial system as well as existing legislations provides for equal rights for persons with disabilities (PWDs). The Philippine Constitution guarantees "full respect for human rights" and "equal protection of the laws" to all persons. This guarantee applies to all cases of discrimination and exclusion.

"The State values the dignity of every human person and guarantees full respect for human rights." (Philippine Constitution. Art. II Sec. 11)

"No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws." (Philippine Constitution, Art. III Sec. 1)

3. To further guarantee the protection and promotion of the rights of persons with disabilities, the Philippines ratified the Convention on the Rights of Persons with Disabilities (the "Convention" or "CRPD") on 15 April 2008, which entered into force on 3 May 2008. This convention was translated into domestic law thorough the Magna Carta of Persons with Disabilities of 1999 (RA 7277). The Philippines, as state party to the CRPD, submitted its initial report to the Committee on the Rights of Persons with Disabilities on 24 November 2008 and is due to undergo periodic review in 2018 pursuant to its treaty obligations.

Participation of persons with disabilities in legal proceedings

4. Under Philippine laws, all persons, including those with disabilities, are allowed to participate in every phase of the judicial process and to seek for appropriate remedies following the procedure set forth under the Rules of Court[3] However, despite legal

[1] As the National Human Rights Institution (NHRI) of the Philippines, the Commission on Human Rights of has the mandate vested by the 1987 Philippine Constitution and the Paris Principles to promote and protect the full range of human rights including civil and political rights, and economic, social and cultural rights. It has the responsibility to regularly report and monitor human rights situations and violations, and recommend steps in advancing the realization of human rights and dignity of all. The Commission has "A"-status accreditation from the Sub-Committee for Accreditation of the Global Alliance of National Human Rights Institutions (GANHRI).

[2] Commission on Human Rights of the Philippines responses to the questionnaire on access to justice of persons with disabilities, relevant to HRC Resolution 31/6 concerning the rights of persons with disabilities, 3 May 2017

[3] A set of regulations laid down by the Supreme Court to govern how courts exercise their jurisdiction

provisions allowing persons with disabilities to participate in court proceedings[4], the problem lies with the appreciation or the weight of the litigant's testimony. It should be taken into consideration that for instance, in cases of persons with psycho-social or sensory impairments, the weight of testimonies would depend solely on the presiding judge. Given existing provisions of law, it may be inferred that physical or mental impairments largely affects the "probative value" of the person's testimony. This situation becomes problematic if aggravated by the lack of training of judges in handling cases involving persons with disabilities. Such case may result to misappreciation of circumstances leading to eventual miscarriage of justice.

5. The legal system is still lacking in terms of providing adequate safeguards on the right to fair trial of persons with disabilities. This is reflected in the failure of courts to provide sensitized court personnel as well as well-trained interpreters to assist the litigants through the process. Consequently, persons with disabilities tend to be discouraged to seek redress and bring proper legal actions.

6. In 2007, The Supreme Court has authorized trial court judges, through the Office of the Court Administrator (OCA), to engage the services of sign language interpreters, recognizing that there are "parties or witnesses who, to be fully understood and to prevent possible miscarriage of justice, may require a sign language interpreter." Previously, such permission was available only from the Supreme Court itself. Following such authorization, OCA can directly authorize the trial court judge to hire the interpreter. Despite this Supreme Court circular, women who are deaf or hard of hearing find it difficult to request for sign language interpreters.

7. Legislators and advocates have long been pushing for the passage of the Filipino Sign Language Act originally debated in 2012 and now pending in both House of Representatives and Senate. The adoption of this bill into law would result to the mandatory use of Filipino sign language in schools, workplaces and broadcast media and would mandate courts, quasi-judicial agencies and other tribunals to ensure the availability of Filipino sign language interpreting in all proceedings involving persons who are deaf or hard of hearing. The act likewise mandates the Supreme Court and other agencies to promote appropriate training for those working in the administration of justice including court personnel and police and prison staff.

Children with disabilities and access to justice[5]

8. The pursuit of justice of children with disabilities in the country remains elusive. Whether as respondents, witnesses or complainants, children with disabilities are confronted with physical and institutional barriers against access to an effective justice system. Aside from the legal services provided by the Public Attorney's Office (PAO), parents and their children are not very much aware of other agencies or organizations that can provide free legal services to children with disabilities. Also, it has been difficult for families of children with disabilities to find lawyers who have suitable training and experience in handling cases of children with disabilities.

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[4] Under Rule 130 of the Rules of Admissibility, persons with disabilities, even those with sensory impairments, may testify as witnesses, provided they can "perceive and make known their perception to others." For example, blind persons can hear, smell and taste and deaf persons can see and "make known their perceptions" through sign language interpreters. The Rules further provide that witnesses must answer the questions "orally", except when a "witness is incapacitated to speak, or the question calls for a different mode of answer."

[5] Commission on Human Rights NHRI Report for the List of Issues to be Adopted at the 9th Pre-Sessional Working-Group Convention on the Rights of Persons with Disabilities, 31 January 2018.

Initiatives to improve right to access to justice

9. A 2008 study by the Commission on Human Rights stated that persons with disabilities had difficulty accessing the legal system due to the fact that not all legal practitioners are able to communicate with persons with disabilities. Lack of adequate interpretation facilities hinder these persons from receiving adequate protection from the law. In response to this challenge, the Department of Justice launched a PWD Legal Assistance Desk at the Quezon City Prosecutors office, which has a manual on disability sensitivity for public attorneys and prosecutors. The Public Attorneys' Office also has PWD-friendly public attorneys who will handle complaints from persons with disabilities.[6]

10. Since the signing of the Incheon Strategy in November 2013, The Department of Justice (DOJ), in partnership with the National Council on Disability Affairs (NCDA) has spearheaded "Disability Awareness and Sensitivity Workshops on Access to Justice for Persons with Disabilities". The workshops were participated mostly by public attorneys and prosecutors committed to support the advocacy on "Make the Right Real for Persons with Disabilities" and ensure protection of their right in accessing justice.[7] Civil society organizations such as the Autism Society Philippines (ASP) likewise implement similar activities hand in hand with the National Council for Disability Affairs (NCDA).

11. During the term of former Justice Secretary Leila De Lima, the DOJ's Action Center was established to ensure legal accessibility especially to persons with disabilities.

12. In 1995, The Supreme Court, by virtue of Memorandum Circular 46-95, enjoined judges to provide persons with disabilities convenient access to courtrooms. In some cases, this is done by holding sessions on the ground floor of court houses.[8]

Lack of disaggregated data

13. The Supreme Court of the Philippines is consistently monitoring cases of persons with disabilities. Data on cases involving persons who are deaf or hard of hearing have been gathered from Supreme Court records as early as the 1920s.

14. Aside from monitoring made by the Supreme Court, civil society organizations such as the Philippine Deaf Resource Center regularly reports data in relation to cases of persons with disabilities with corresponding recommendation on how to better administer justice while taking into consideration the special needs of the said litigants.

15. Despite the presence of efforts from the government and civil society organizations to provide monitoring mechanisms and disaggregated data pertaining to persons with disabilities, data has not been sufficiently gathered nationwide. In 2013, the Philippine Coalition on the U.N Convention of the Rights of Persons with Disabilities (PCCRPD) noted as an example that reported rape cases of persons with disabilities and all other women have largely been documented only for the National Capital Region. Currently, there is no way to systematically secure information about cases in trial courts except for those which have reached the Supreme Court. Request for assistance by civil society from the Supreme Court – Office of the Court Administrator to track and follow-up cases involving deaf parties for instance, have yielded only a few responses from the lower courts.

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[6] Christine Joyce Andres, *2 Things the PWD Community Needs from All of Us*. Lifelifters, 29 January 2016. http://lifelifters.net/category/uncategorized/ (last accessed: 28 April 2017).

[7] Disability Awareness and Sensitivity Workshop On Access to Justice for Persons with Disabilities Held. http://www.ncda.gov.ph/2014/08/disability-awareness-and-sensitivity-workshop-on-access-to-justice-for-persons-with-disabilities-held/ (last accessed on April 17, 2017).

16. Without information on the status of cases involving persons with disabilities, or effective mechanisms to secure these information, the pursuit of justice by such persons become very difficult thus pushing them even deeper into marginalization; therefore, the Commission recommends for the State to initiate the development of a systematic and disaggregated data collection pertaining to the situations and human rights issues of persons with disabilities.

Recommendations:

17. When it comes to government programs and services, the State still lacks efforts to ensure the accessibility of services to persons with disabilities. Oftentimes, services provided to the sector are charity-based and not geared towards actual empowerment, development and eradication of discriminatory practices. With respect to access to justice, barriers persist that hinder persons with disabilities from fully participating in legal proceedings. These barriers result to deprivation of equal protection and benefits under the law which compromises access to justice and due process.

18. To address the issues regarding access to justice of PWDs, the Commission recommends the following to the State Party:

- Develop and maintain a comprehensive database of interpreters that is properly profiled and assessed to ensure efficient service to persons who are deaf or hard of hearing. This initiative is important to bridge communication gaps in cases that require interpretation and to ensure that there will be no miscarriage of justice brought about by such communication gaps.

- Facilitate regular institutional training programs on how to properly respond to cases wherein the parties are persons with disabilities. Participants should include those working in the judiciary especially sign language interpreters, as well for those who carry out court orders or deal with court proceedings.

- Properly monitor access to justice of persons with disabilities at the national level down to the barangay (villages) level and to require case disaggregated data involving persons with disabilities in all institutions performing judicial and quasi-judicial functions.

- For the Congress to expedite the passage of proposed legislations concerning persons with disabilities and access to justice.

- With respect to children with disabilities, there is a need for the judiciary to institutionalize the process of hiring interpreters in order to ensure that only qualified interpreters represent children with disabilities in courts.

- Conduct regular consultations with persons with disabilities, disability rights groups and government agencies and non-government organizations working on disability issues so as to determine the specific challenges of persons with disabilities in accessing justice.